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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/884,656	06/20/2001	Sharon Durst	1578	4479

7590

03/25/2002

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EXAMINER

RHEE, JANE J

ART UNIT

PAPER NUMBER

1772

DATE MAILED: 03/25/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/884,656	DURST ET AL.	
	Examiner	Art Unit	
	Jane J Rhee	1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) ____ is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 6-10 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ | 6) <input type="checkbox"/> Other: |

RESPONSE TO AMENDMENT

Response to Restriction

1. Applicant's election with traverse of Group II in Paper No. 3 is acknowledged. The traversal is on the ground(s) that the article without fasteners would merely constitute a plurality of layers of fiberglass, unconnected to each other and which independent layers would be difficult to maintain in the erect disposition. Furthermore, an air gap would be introduced between the unattached layers, which would lead to devalue the product's ability to resist bullet impact. This is not found persuasive because the applicant never claimed that the independent layers had to maintain an erect disposition therefore there would be no air gap in between the unattached layers.

The requirement is still deemed proper and is therefore made FINAL.

REJECTIONS REPEATED

2. The 35 U.S.C. § 103 rejection of claims 6-7 over applicant's admitted prior art in view of Klein is repeated for reasons previously record in Paper #3, Page 3, paragraph #6.

3. The 35 U.S.C. § 103 rejection of claims 6-7 over applicant's admitted prior art in view of Klein and further in view of Dickson et al. is repeated for reasons previously record in Paper #3, paragraph #7.

ANSWERS TO APPLICANT'S ARGUMENTS

4. Applicant's arguments filed in Paper #4 regarding the 35 U.S.C. 103 rejections of claims 6-7 over Applicant's admitted prior art in view of Klein have been fully considered but they are not persuasive.

Applicant's argues that fiberglass is never discussed in the Klein's reference. However, the admitted prior art discloses that the claimed fiberglass is a notoriously well-known material in the art (Paper #3, Page 3 paragraph 6).

In response to Applicant's argument that Klein's fails to disclose the same purpose for staggering the layers, which is to prevent a bullet from going through the seam, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte masham*, 2 USPQ2d 1647 (1987). In other words, the applicant does not state a use claim therefore, the use of or purpose of the article is irrelevant and furthermore, the reference enclosed is directed to the article itself which contains the limitation of staggering layers (Paper #3, Page 3 paragraph 6).

Applicant's argues that the prior art does not show the ability to achieve higher levels of U.L. ballistic protection from the sequential placement of lower level 1,2, and 3 ballistic resistant sheets. However, the applicant did not claim a 'sequential' placement of lower level 1,2, and 3 of the ballistic resistant sheets, instead the applicant claims that the highest UL listing level is toward the interior of the protection zone wherein the *combination* of levels 1 and 2 and the *level* 2 are placed toward the interior of the zone

of protection. Also, since applicant's prior art discloses the same layers desired by the applicant it is inherent that that layers will achieve higher levels of U.L. ballistic protection.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jane J Rhee whose telephone number is 703-605-4959. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 703-308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-5408 for regular communications and 703-301-9999 for After Final communications.


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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Jane Rhee
March 21, 2002


HAROLD PYON
SUPERVISORY PATENT EXAMINER 3/22/02
1772